

Trial on Merits  
June 6, 2017

REPORTER'S RECORD  
VOLUME 3 OF 5 VOLUMES  
TRIAL COURT CAUSE NO. CR2016-233  
COURT OF APPEALS NO. 01-17-00534-CR

STATE OF TEXAS                                 ) IN THE DISTRICT COURT  
  )  
vs.   ) COMAL COUNTY, TEXAS  
  )  
DEREK DALE PORTER                             ) 207TH JUDICIAL DISTRICT

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TRIAL ON MERITS  
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On the 6th day of June, 2017, the following  
proceedings came on to be held in the above-titled and  
numbered cause before the Honorable Dibrell W. Waldrip,  
Judge Presiding, held in New Braunfels, Comal County,  
Texas.

Proceedings reported by computerized stenotype  
machine.

Trial on Merits  
June 6, 2017

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**EXHIBITS OFFERED BY STATE**

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>OFFERED</b>	<b>ADMITTED</b>
<b>20</b>	<b>Hays County jail records</b>	<b>11 v3</b>	<b>11 v3</b>
21	CR-11-0347 Plea bargain agreement redacted	24 v3	24 v3
21-A	CR-11-0347 Plea bargain agreement unredacted	24 v3	24 v3
22	CR-11-348 Plea bargain agreement redacted	24 v3	24 v3
22-A	CR-11-348 Plea bargain agreement unredacted	24 v3	24 v3
23	Ten-print card	14 v3	14 v3

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1                               P R O C E E D I N G S

2                               (Open court, defendant present, no jury)

3                               THE COURT: Are y'all ready to proceed?

4                               MR. MILLAN: Yes, sir.

5                               MS. DOYER: Yes, Your Honor.

6                               I've got two witnesses, one of which is  
7 still -- Ronnie Womack is working on something over at  
8 the sheriff's office, so there might be a delay on that.  
9 I told him to get here as soon as possible. I'm told  
10 there's only one of him now. Where there were two  
11 evidence techs, he's now down to the only person and  
12 someone is coming to pick up evidence this morning. I'm  
13 doing my best.

14                              THE COURT: Okay. Well, where is -- who  
15 is it that's coming?

16                              MS. DOYER: Ronnie Womack.

17                              THE COURT: I know, but you said someone  
18 is coming for evidence.

19                              MS. DOYER: I don't -- they said a diver.  
20 I don't know what that means. It was in relation to  
21 another case.

22                              THE COURT: Well, the jurors may take  
23 precedence over the diver.

24                              MS. DOYER: I've communicated that  
25 information.

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1 THE COURT: We're not going to sit here  
2 all day long --

3 MS. DOYER: Yes, sir.

4 THE COURT: -- waiting on -- is there any  
5 objection, Mr. Millan, if we had to just proceed and  
6 take him out of order or -- and if there is, that's  
7 fine. It's understandable. I don't know if you have  
8 witnesses, so that's my point.

9 MR. MILLAN: I'd rather wait to hear  
10 everything in order. I don't want to be doing stuff out  
11 of order, Judge.

12 THE COURT: Okay. Well, who is the first  
13 witness?

14 MS. DOYER: A records custodian. If I  
15 could get a minute, I'm going to talk to Ronnie.

16 THE COURT: Okay. So my point is that  
17 person is probably not going to take too long.

18 MS. DOYER: The two I have won't take  
19 long.

20 THE COURT: Chances are he can be back by  
21 9:30 if he'll just get here rather than keeping the jury  
22 waiting.

23 MS. DOYER: He said 30 minutes is his best  
24 estimate -- the best he can do is 30 minutes.

25 THE COURT: Find out who it is, who he's

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1 waiting on.

2 MS. DOYER: I'm sorry, sir?

3 THE COURT: Can you find out who it is  
4 that he's waiting on?

5 MS. DOYER: Yes, sir.

6 (Off the record)

7 (Open court, defendant present, no jury)

8 MS. DOYER: I'm still waiting. Amber said  
9 she's doing her best to get him here.

10 THE COURT: If they had a murder last  
11 night and he's collecting evidence, that's one thing.  
12 Do you understand what I'm saying?

13 MS. DOYER: Yes, sir.

14 THE COURT: But if this is just something  
15 that somebody is coming to pick something up --

16 MS. DOYER: What I heard is there's a  
17 diver coming to pick up some type of computer equipment  
18 and that there were two murders last week. I don't  
19 know.

20 THE COURT: I mean -- okay. It's not  
21 emergent. It's not happening right now. It's something  
22 from last week.

23 MS. DOYER: Your Honor, while we're  
24 waiting, if we move into the punishment phase for  
25 scheduling purposes, we're prepared to go straight into

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1 punishment. Would you want us to have people lined up  
2 or would you want us to wait as far as if you want to do  
3 a PSI?

4 THE COURT: We can probably do it either  
5 way, it doesn't matter, so as to prevent having to -- if  
6 there are witnesses anticipated that have already been  
7 subpoenaed --

8 MS. DOYER: Yes, sir.

9 THE COURT: -- unless you're going to  
10 leave them under the same subpoena and we can make sure  
11 they understand the case has not been reset.

12 MS. DOYER: I don't know that we'll get  
13 another block of time sufficient to present the  
14 punishment case, if we reset it.

15 THE COURT: Okay. Bring them on in.

16 (Jury enters courtroom)

17 THE COURT: All right. Thank you.

18 Everybody can be seated.

19 Next witness, please?

20 MS. DOYER: State calls Natalie Ramirez.

21 THE COURT: Let me get you to raise your  
22 right hand.

23 (Witness sworn)

24 THE COURT: Thank you. You may be seated.

25 If you would just make sure you get close up to that



NATALIE RAMIREZ - JUNE 6, 2017  
Direct Examination by Ms. Doyer

1 mike.

2 You may proceed.

3 NATALIE RAMIREZ,  
4 having been first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. DOYER:

7 Q. Ms. Ramirez, would you please state your name  
8 for the record.

9 A. Natalie Ramirez.

10 Q. And, Ms. Ramirez, how are you presently  
11 employed?

12 A. I am employed with the Hays County Sheriff's  
13 Office.

14 Q. And what is your current position with the Hays  
15 County Sheriff's Office?

16 A. Custodian of jail records.

17 Q. What are some of the duties that are associated  
18 with that position? [stop

19 A. Maintaining the fingerprints, making reports,  
20 any incarceration paperwork that is processed for the  
21 jail, booking information.

22 Q. Those records that are made -- say, for  
23 example, a jailing record, are those records made at or  
24 near the time of incarceration?

25 A. Yes, ma'am.

NATALIE RAMIREZ - JUNE 6, 2017  
Direct Examination by Ms. Doyer

1 Q. Are those records made by someone with personal  
2 knowledge of the events?

3 A. Yes.

4 Q. And are those records kept in the ordinary  
5 course of Hays County jail's business?

6 A. Yes.

7 Q. Did you bring a record here with you today  
8 related to an arrest of Derek Dale Porter on November  
9 23rd, 2010?

10 A. Yes, ma'am.

11 MS. DOYER: May I approach the witness,  
12 Your Honor?

13 THE COURT: Yes, ma'am.

14 Q. (BY MS. DOYER) This item that I've just marked  
15 as State's Exhibit 20, can you describe what's contained  
16 in that record?

17 A. Yes. The first page is a booking report that  
18 identifies the individual's first, middle name, last  
19 name, identifying information and states the date  
20 booked, the date of arrest, emergency contact  
21 information.

22 Q. And the next page of that record?

23 A. Would be the fingerprints from the booking  
24 process of when he was arrested and brought in.

25 Q. Is this a true and accurate representation of

RONNIE WOMACK - JUNE 6, 2017  
Direct Examination by Ms.Doyer

1 the records that are maintained by the Hays County  
2 Sheriff's Office?

3 A. Yes, ma'am.

4 MS. DOYER: State offers  
5 State's Exhibit 20.

6 MR. MILLAN: No objection.

7 THE COURT: It's admitted.

8 MS. DOYER: Pass the witness.

9 MR. MILLAN: No questions.

10 THE COURT: Okay. Thank you. You may  
11 step down.

12 MS. DOYER: State calls Detective Ronnie  
13 Womack.

14 Your Honor, may this witness be excused?

15 THE COURT: You may.

16 MS. DOYER: Thank you.

17 (Witness sworn)

18 THE COURT: Thank you.

19 RONNIE WOMACK,  
20 having been first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. DOYER:

23 Q. Detective Womack, could you please state your  
24 name for the record.

25 A. Ron Womack, W-O-M-A-C-K.

RONNIE WOMACK - JUNE 6, 2017  
Direct Examination by Ms.Doyer

1 Q. And, Detective Womack, how are you presently  
2 employed?

3 A. I'm a sergeant detective with the Comal County  
4 Sheriff's Office.

5 Q. And what are some of the duties associated with  
6 your current position, sir?

7 A. My current position mainly involves fingerprint  
8 processing, fingerprint work and identification.

9 Q. Do you go through any special training or  
10 education to be able to hold that position?

11 A. I've had basic, immediate, advanced and then  
12 ultra advanced through some of the best instructors in  
13 the world. I've been doing it for about 22 years.

14 Q. Can you describe generally when a fingerprint  
15 is.

16 A. Well, a fingerprint -- what I'm doing today is  
17 a known -- what we call an inked or a live scan with  
18 just like a scanner. That's basically what it is.

19 Q. And how do you use a fingerprint to conduct a  
20 comparison and subsequently an identification?

21 A. When I have a fingerprint, I always consider it  
22 to be an unknown until I look at the ten-print card or a  
23 suspect or a defendant. I take that -- I take that  
24 fingerprint and I start evaluating it first for -- for a  
25 pattern. And then if the pattern matches, then I go

RONNIE WOMACK - JUNE 6, 2017  
Direct Examination by Ms.Doyer

1 from there to second-level detail, which is any ridges,  
2 bifurcations on the fingerprint. We map that out.  
3 Particularly -- ten-print cards are very easy to do  
4 because of the information that is involved in a  
5 ten-print versus working a crime-scene latent with only  
6 maybe seven, eight, nine second-level details.

7 Q. Did you conduct an analysis of fingerprints in  
8 this particular case?

9 A. Yes, ma'am.

10 MS. DOYER: May I approach the witness,  
11 Your Honor?

12 THE COURT: Yes, ma'am.

13 Q. (BY MS. DOYER) Detective Womack, I'm going to  
14 show you what I've marked as State's Exhibit 23. Do you  
15 recognize this?

16 A. Yes, ma'am.

17 Q. What is this?

18 A. This is a known live scan ten print from  
19 Mr. Derek Porter taken yesterday in the jail.

20 Q. The individual whose prints you took on -- on  
21 June 5th, 2017, do you see him here in the courtroom  
22 today?

23 A. Yes. It's the gentleman with the blue shirt.

24 MS. DOYER: For the record, the witness  
25 has identified the defendant.

RONNIE WOMACK - JUNE 6, 2017  
Direct Examination by Ms.Doyer

1 Q. (BY MS. DOYER) Can you describe what a live  
2 scan is?

3 A. If any of you have ever used a Xerox machine, a  
4 live scan is an updated, more technical version of that.  
5 It's usually set at 500 dpi, dots per square inch. It  
6 captures all of the information here which is regulated  
7 by the FBI. The FBI signs off on those live scan  
8 machines to be regulated and approved by them. The live  
9 scan system that we use is approved by the FBI.

10 Q. I'll take that for a moment.

11 MS. DOYER: State offers State's  
12 Exhibit 23.

13 MR. MILLAN: No objection.

14 THE COURT: It's admitted.

15 Q. (BY MS. DOYER) Detective Sergeant Womack, did  
16 you compare these prints to another set of prints of a  
17 Derek Porter?

18 A. Ma'am?

19 Q. Did you compare State's Exhibit 23, the prints  
20 that you took, to another set of prints?

21 A. Yes, ma'am.

22 MS. DOYER: May I approach the witness,  
23 Your Honor?

24 THE COURT: You may.

25 Q. (BY MS. DOYER) I'm handing you back

RONNIE WOMACK - JUNE 6, 2017  
Direct Examination by Ms.Doyer

1 State's Exhibit 23. I'm going to show you what's been  
2 admitted as State's Exhibit 20. The prints that are  
3 State's Exhibit 20, are those the same prints that you  
4 used to conduct the comparison?

5 A. That is correct, ma'am.

6 Q. Okay. Looking at State's Exhibit 20, what is  
7 the date of arrest for that particular offense?

8 A. Give me a moment here. Let's see. It shows to  
9 be 11-23-2010.

10 Q. Okay. And does it identify the individual who  
11 was printed on that date?

12 A. Yes, ma'am.

13 Q. Okay. And who is that individual?

14 A. It shows to be a Derek Dale Porter.

15 Q. Now, using those two prints -- two sets of  
16 prints, Detective Womack, did you conduct an analysis to  
17 see if there was a match?

18 A. Yes, ma'am, I did.

19 Q. Okay. And can you describe how you went about  
20 that process?

21 A. I use a special software program on a -- on a  
22 24-inch ultra screen and I -- you'll see the old school  
23 ways where they use glasses. I use a screen. And I  
24 have state-of-the-art equipment, state-of-the-art  
25 software. So what I did is I scanned the -- the

1 known -- and I still consider this to be an unknown.  
2 Even though his name is on it, it's still an unknown to  
3 me. I know what this card is because I watched him  
4 print it.

5                   So what we do is we do the -- we conduct  
6 the comparison. We have ten digits that we deal with.  
7 On those ten digits, the tips of the fingers -- there's  
8 150 to 350 second-level details, excluding third-level  
9 detail. These are basic prints to work. They're some  
10 of the easiest things to do in identification, and it is  
11 a match.

12           Q.     That was my next question. In your opinion,  
13 Detective Womack, are the prints from State's Exhibit 23  
14 the same individual contained in State's Exhibit 20?

15           A.     That is correct, ma'am.

16                   MS. DOYER: May I approach again,  
17 Your Honor?

18                   THE COURT: Yes, ma'am.

19           Q.     (BY MS. DOYER) Detective Womack, I'm going to  
20 show you what I've marked as State's Exhibits 21 and 22.  
21 Without reading anything, could you flip through those  
22 and tell me generally what they are?

23           A.     It shows to be a plea bargain.

24           Q.     Okay. These court documents related to -- and  
25 if you look back at the first page of both -- an offense



1 occurring on November 23rd, 2010.

2 A. I see that, yes, ma'am. That is correct.

3 Q. Okay. Thank you.

4 MS. DOYER: I'll pass the witness.

5 MR. MILLAN: No questions.

6 MS. DOYER: May this witness be excused?

7 THE COURT: You may. Thank you.

8 MS. DOYER: May we approach briefly,

9 Your Honor?

10 THE COURT: Yes, ma'am.

11 (At the bench, on the record)

12 MS. DOYER: I'm anticipating an objection  
13 because of this here, so I just thought I'd take this up  
14 now.

15 THE COURT: I'm presuming -- what is this  
16 that's marked as State's Exhibit 22?

17 MS. DOYER: 21 and 22.

18 THE COURT: Okay.

19 MS. DOYER: And this was what I was  
20 concerned about here.

21 MR. MILLAN: Yeah. I'm concerned about it  
22 as well. I mean, I don't have a problem if it's somehow  
23 redacted.

24 THE COURT: So that's a big difference  
25 in --

1 MS. DOYER: Let me see. Are you objecting  
2 to it?

3 MR. MILLAN: My thing is, I'm concerned  
4 that even if it's redacted, there's going to be -- it's  
5 going to look like something was scratched out.

6 MS. DOYER: Well, I can -- what I can do  
7 is just show it to the probation officer and then we can  
8 only introduce the judgments.

9 THE COURT: Would it just -- be  
10 permissible just to -- just to introduce those two  
11 pages?

12 MS. DOYER: I was thinking I'd just pull  
13 off the front page.

14 THE COURT: That, too.

15 MR. MILLAN: Okay.

16 THE COURT: Okay. You can just -- those  
17 stickers go -- I mean, will they come off of there or do  
18 we need to reprint the stickers?

19 MS. DOYER: Yeah, probably reprint them.

20 THE COURT: I don't know. And then --  
21 just so the record -- the record is clear, too, if you  
22 want to, just -- so the record reflects what -- what  
23 we're removing, it -- it can be either just a court  
24 exhibit --

25 MS. DOYER: Sure.

OLIVER MEEK - JUNE 6, 2017  
Direct Examination by Ms. Kilday

1 THE COURT: -- the front page of each --

2 MR. MILLAN: Uh-huh.

3 THE COURT: -- and that you're objecting  
4 to -- as I'm understanding looking at the dates, it's  
5 not real clear, but yet a different potential family  
6 violence enhancement. So what will go back to the jury  
7 is just the judgment package without reference to that.

8 (At the bench, concluded)

9 MS. KILDAY: State calls Oliver Meek.

10 THE COURT: Let me get you to raise your  
11 right hand.

12 (Witness sworn)

13 THE COURT: Thank you.

14 OLIVER MEEK,  
15 having been first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. KILDAY:

18 Q. Good morning. Could you please spell your name  
19 out for the record.

20 A. Oliver Kent Meek, O-L-I-V-E-R, K-E-N-T,  
21 M-E-E-K.

22 Q. Mr. Meek, where are you currently employed?

23 A. City of Corpus Christi.

24 Q. How long have you worked there?

25 A. Three years.

OLIVER MEEK - JUNE 6, 2017  
Direct Examination by Ms. Kilday

1 Q. Where did you work prior to working for the  
2 City of Corpus Christi?

3 A. Nueces County.

4 Q. And prior to working for Nueces County?

5 A. Hays County.

6 Q. How long did you work for Hays County?

7 A. Eight years.

8 Q. Do you remember the time span or -- or were you  
9 working for Hays County around 2011?

10 A. Yes.

11 Q. What was your position?

12 A. Adult probation officer.

13 Q. And in your capacity as an adult probation  
14 officer, did you have the opportunity to supervise an  
15 individual named Derek Dale Porter?

16 A. I did.

17 Q. Do you recognize Mr. Porter in the courtroom  
18 here today?

19 A. I do.

20 Q. Please identify him and a piece of clothing  
21 that he's wearing.

22 A. He's sitting adjacent wearing a light blue  
23 button-down shirt.

24 MS. KILDAY: Let the record reflect that  
25 the witness has identified the defendant.

OLIVER MEEK - JUNE 6, 2017  
Direct Examination by Ms. Kilday

1                   Permission to approach the witness?

2                   THE COURT: You may.

3           Q.     (BY MS. KILDAY) Mr. Meek, I'm handing you  
4 what's been marked as State's Exhibit 21. Do you  
5 recognize this?

6           A.     I do.

7           Q.     Okay. So we're going to speak in very limit  
8 purposes for it. What's the cause number that this is  
9 related to?

10          A.     CR-11-0347.

11          Q.     And what is the case name, state versus who?

12          A.     Derek Dale Porter.

13          Q.     You can please tell me the offense date that is  
14 listed in this information?

15          A.     23rd of November, 2010.

16          Q.     And who is the -- the listed complaining  
17 witness or victim in this offense report or information?

18          A.     LaToya Branecky.

19          Q.     Secondly, I'm going to turn your attention to  
20 what's marked as State's Exhibit 21-A. Do you recognize  
21 this?

22          A.     I do.

23          Q.     What is it?

24          A.     It's a plea bargain agreement.

25          Q.     And now we're going to look through -- do you

OLIVER MEEK - JUNE 6, 2017  
Direct Examination by Ms. Kilday

1 recognize this page here?

2 A. Yes, I do.

3 Q. What was the final date the judgment was  
4 entered for this plea bargain?

5 A. It was filed on February 3rd of 2012. The  
6 judgment was dated February 2nd of 2012.

7 Q. And this was a -- this is a judgment of  
8 conviction that we're referring to?

9 A. Correct.

10 Q. And do you see in the header what court this  
11 was in?

12 A. 22nd District Court. I believe that was Judge  
13 Ramsay at the time.

14 Q. Of Hays County?

15 A. Of Hays County.

16 Q. Next I'm going to turn your attention here to  
17 State's Exhibit 22. What's the cause number in  
18 State's Exhibit 22?

19 A. CR-11-0348.

20 Q. Same -- what's the case style, State versus  
21 who?

22 A. Derek Dale Porter.

23 Q. What is the offense listed in this information?

24 A. Assault family violence, strangulation, repeat  
25 offender.

OLIVER MEEK - JUNE 6, 2017  
Direct Examination by Ms. Kilday

1 Q. And who is the victim that's listed in -- in  
2 the offense -- the information?

3 A. It's the same as the previous cause, LaToya  
4 Branecky.

5 Q. And the offense date as listed in the  
6 information?

7 A. November 23rd of 2010.

8 Q. I'm going to turn your attention to  
9 State's Exhibit 22-A. Do you recognize it?

10 A. Yes.

11 Q. Do you recognize this page that I'm showing  
12 you?

13 A. Yes, I do.

14 Q. What are we looking at here?

15 A. The judgment for Cause CR-11-038. It's the  
16 judgment of conviction.

17 Q. And what's the offense he was convicted for?

18 A. Lesser-included offense of assault family  
19 violence.

20 Q. What was the date the judgment was entered on?

21 A. February 2nd of 2012.

22 Q. And the Court that this judgment was entered  
23 into?

24 A. It was also the 22nd District Court of Hays  
25 County.

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Direct Examination by Ms. Kilday

1 Q. Finally, you had the opportunity to supervise  
2 the defendant for these two cause numbers?

3 A. I did.

4 Q. The -- the same -- the individual that you  
5 supervised, is it the same individual that you see here  
6 in the courtroom today?

7 A. Yes, it is.

8 MS. KILDAY: State offers Exhibits 21-A  
9 and 22-A.

10 THE COURT: Any objection to the -- to the  
11 As?

12 MR. MILLAN: No objection to the As,  
13 Your Honor.

14 THE COURT: Okay. Very good. They'll be  
15 admitted.

16 MS. KILDAY: Pass the witness.

17 MR. MILLAN: No questions.

18 THE COURT: Thank you. You may step down.

19 MS. DOYER: May this witness be excused,  
20 Your Honor.

21 THE COURT: Yes.

22 MS. DOYER: State rests.

23 THE COURT: Do you wish to make an  
24 opening?

25 MR. MILLAN: No, Your Honor. I'll go



OLIVER MEEK - JUNE 6, 2017  
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1 straight into testimony.

2 THE COURT: Okay.

3 MR. MILLAN: I'm going to call Gregory  
4 McClure.

5 May I approach, Your Honor?

6 THE COURT: Yes, sir.

7 (At the bench, on the record)

8 MR. MILLAN: The witnesses on call are all  
9 under subpoena. They were called as State's witnesses,  
10 but the State never called them. I'm calling Gregory  
11 McClure, Gerry Nance and I'm re-calling Georganne  
12 Shirley.

13 I've informed them so that they get the  
14 people over here as quickly as they can. I couldn't  
15 anticipate when they were going to --

16 THE COURT: Do we know where they're at?

17 MS. DOYER: I don't, no.

18 MR. MILLAN: They're working on it right  
19 now.

20 (At the bench, concluded)

21 THE COURT: Ladies and gentlemen, some of  
22 the witnesses that have been subpoenaed have apparently  
23 decided to not be here at the present time. We're  
24 working on it. We'll just take a short break.

25 (Jury leaves courtroom).

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1 THE COURT: Okay. Who is Greg McClure?

2 MR. MILLAN: He's the -- the officer who  
3 transported Derek to -- he was one of the original  
4 officers at the scene and he transported Mr. Porter to  
5 the jail from the scene.

6 MS. DOYER: I have a concern about  
7 re-calling Georganne. If it's just for the purposes of  
8 impeachment, obviously I'm going to object to that.

9 MR. MILLAN: Judge, we can have a hearing  
10 on that right now.

11 THE COURT: Okay. I mean, it's their case  
12 in chief. They can call the witness.

13 And who is the -- the third witness?

14 MR. MILLAN: I'm sorry?

15 THE COURT: Who was the third witness?

16 MR. MILLAN: I said McClure, Nance and  
17 Shirley.

18 THE COURT: Okay. Nance is the homeowner.

19 MR. MILLAN: Yes, sir.

20 THE COURT: Okay. I'm trying to recall.  
21 I guess, have we been in contact with him?

22 MS. DOYER: He said it's going to take  
23 about an hour and a half to get here.

24 The defense can rely on our subpoenas,  
25 but -- I mean, I can't control when they want to call

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1 people. I mean they still have an obligation, if  
2 they're going to call witnesses, to go to those efforts.  
3 Ms. Hardcastle doesn't work for Mr. Millan.

4 MR. MILLAN: Judge, I'm entitled to rely  
5 on the State's subpoenas.

6 MS. DOYER: On the subpoenas, but not on  
7 our staff.

8 MR. MILLAN: Well, I'll calling people who  
9 have been subpoenaed.

10 THE COURT: You might as well start  
11 drafting some writs of attachment or something. I don't  
12 know if you did convey to Mr. Millan how long you  
13 thought this morning would be. We were -- everybody was  
14 under the impression we were going to have a hearing  
15 regarding some fact witnesses other than just records  
16 custodian or probation officers or fingerprint people.

17 I'm not sure that anybody anticipated -- I  
18 wasn't anticipating, you know, resting in 30 minutes  
19 myself. So if that had been conveyed to Mr. Millan, I  
20 don't know; but otherwise, he can't be ready either.

21 Where is --

22 MR. MILLAN: They said it's going to take  
23 about an hour on Shirley.

24 THE COURT: She's at the jail, I presume?

25 MR. MILLAN: McClure, how long?

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1 MS. HARDCASTLE: I just got off the phone  
2 with him. He said he's on his way, but I don't know.

3 THE COURT: They can bring her in her jail  
4 clothes.

5 MS. HARDCASTLE: He lives in San Antonio.  
6 I don't know if he's working today or not.

7 MR. MILLAN: Judge, I've requested a writ  
8 of attachment, Your Honor, if the Court ordered one.  
9 But in terms of drafting one, I --

10 THE COURT: I mean, the sheriff's office  
11 is going to have to have something if we're going to  
12 issue it to assist in gaining people's presence.

13 MR. MILLAN: Right. He's been served. I  
14 made sure. We're working on a writ of attachment,  
15 Your Honor.

16 THE COURT: Okay. I don't see that I have  
17 any on this particular computer. I've had --

18 MR. MILLAN: He found one and we're going  
19 to see if we can get it printed out over at the clerk's  
20 office.

21 MS. DOYER: Is there some issue with  
22 Georganne that we're going to need to take up that we  
23 can just do now?

24 MR. MILLAN: That's fine.

25 MS. DOYER: I mean, I don't know.

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1                   MR. MILLAN: I -- I told the Court I'm  
2 ready -- Judge, if you're ready.

3                   THE COURT: Sure. Defendant is present.

4                   MR. MILLAN: Defendant's here.

5                   THE COURT: Counsel for both sides are  
6 present. The jury is out.

7                   MR. MILLAN: Judge, I wanted to make what  
8 is called an [ ]Alford showing on Ms. Shirley. I don't  
9 know if you remember Alford v. U.S., 1931 case.

10                  THE COURT: I don't right off the top of  
11 my head.

12                  MR. MILLAN: Well, what was held in the  
13 Alford v. U.S. case was that a proper cross-examination  
14 question is where "do you live" to a person who is  
15 incarcerated. And on its face it's an essential step in  
16 identifying the witness in their environment.

17                  The defense is entitled to show by  
18 cross-examination that the testimony of the witness was  
19 affected by fear or favor growing out of their  
20 detention. And it's immaterial whether the person was  
21 in custody as a result of their participation in the  
22 transaction for which the defendant was indicted or for  
23 some other offense.

24                  It also says that it -- it supersedes any  
25 limine. And if you -- if you look at the line of cases

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1 from Alford, they go through Davis v. Alaska, 1974,  
2 another supreme court case. And it's also been taken up  
3 by the court of criminal appeals in multiple cases,  
4 namely Parker v. Texas, 657 S.W.2d 137, Carmona versus  
5 Texas, 698 S.W.2d 100. They stand for the proposition  
6 that this -- that essentially the -- the -- this case  
7 the Alford v. U.S. case, is the precursor to the 613(b)  
8 rule, the motive and bias rule.

9 And I am allowed to question the person  
10 with, if they're in custody, number one, where -- where  
11 are they in custody and what are the circumstances of  
12 that confinement. And the jury is allowed to, you know,  
13 make whatever inference they want off of that based on  
14 whether there's a motive for the person to []embrace  
15 themselves to the prosecution based on the circumstances  
16 that they're in.

17 THE COURT: Okay. Just what are the  
18 circumstances that -- that the witness is in? I  
19 understand she's incarcerated and charged with something  
20 unrelated to the defendant, but I don't know where it  
21 happened. I don't know --

22 MS. DOYER: She's not incarcerated on  
23 those charges anymore. She bonded out. The only reason  
24 she's here incarcerated is for her subpoena bond. So if  
25 that's the whole basis of the argument, that's

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1 completely improper.

2 And everything in Davis v. Alaska, Irby v.  
3 State, Carpenter, everything that came after that says  
4 in order to even show that she has some type of -- of  
5 vulnerable position with the State, you have to  
6 establish that there's a causal nexus.

7 So her statement in court yesterday was  
8 completely consistent with the statement that night. We  
9 had an examining trial. Her testimony at the examining  
10 trial -- nothing has change because of the fact that she  
11 now faces some charges in Hays County, so he can't --

12 THE COURT: But the State felt it  
13 necessary to put her in jail to ensure her appearance.

14 MS. DOYER: No. I put a subpoena bond on  
15 it so that if she didn't come, I had another way to go  
16 and find her. It had nothing to do with her being in  
17 custody for these other charges.

18 THE COURT: I understand.

19 MR. MILLAN: She's in custody, Your Honor.

20 MS. DOYER: But that's not the standard.  
21 The standard is --

22 MR. MILLAN: The State made just an  
23 outright incorrect statement stating that her -- her  
24 position hasn't changed from the date of the incident  
25 until now. She -- the night -- or the date of this

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1 incident, she -- she -- she did an affidavit of  
2 nonprosecution. She said she didn't want to go forward  
3 with this case. Now she's testifying and saying all of  
4 these things.

5 MS. DOYER: She said she wasn't sure and  
6 that she didn't know if she should do anything because  
7 nothing had been done before, which is on the COBAN  
8 statements which Mr. Millan has and was able to review.  
9 That's been her position this whole time.

10 You have to show that there's a nexus  
11 between what she's facing in some other county and how  
12 it colored her testimony here. There's a case directly  
13 on point, Carpenter, where there was an individual who  
14 picks up federal charges later. And the court of  
15 criminal appeals there said, hey, that's a different  
16 jurisdiction and it happened after the fact. There is  
17 no logical connection or nexus.

18 So my objection is not only does it not  
19 meet the standards under the supreme court or court of  
20 criminal appeals, it's also under 403 more prejudicial  
21 than probative of anything and it's irrelevant.

22 MR. MILLAN: Judge, I think under 613(b)  
23 it's -- it's -- it goes to motive. I think whatever  
24 slight motive even would be admissible.

25 THE COURT: Where is it that she was



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1 charged?

2 MS. DOYER: Hays County.

3 MR. MILLAN: Hays County.

4 MS. DOYER: She was only arrested.

5 MR. MILLAN: Aggravated assault and --

6 THE COURT: I understand.

7 MR. MILLAN: -- and possession. It says  
8 200 to 400 grams. Was it 200 to 400 grams?

9 MS. DOYER: It says first-degree drugs.

10 THE COURT: What is the nature of the  
11 aggravated assault charge?

12 MR. MILLAN: Hitting people with a bat.

13 MS. DOYER: Somebody threw needles at her  
14 and slammed her hand in the door and she hit somebody  
15 with a bat allegedly.

16 MR. MILLAN: That's her version of it.

17 MS. DOYER: That's the conglomeration of  
18 the allegations in the report.

19 THE COURT: Well, I don't think all of  
20 those details are admissible. I just was trying to work  
21 my way through this process at the moment. So is not  
22 the affidavit of nonprosecution admissible?

23 MS. DOYER: From that night that she  
24 didn't want to pursue charges? It would be, but he  
25 asked her about that. I asked her about that and she

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1 admitted that.

2 THE COURT: I'm not recalling that.

3 MS. DOYER: I asked her if she wanted to  
4 press charges that night and why it wasn't detailed in  
5 her statement. She said no because nothing had ever  
6 happened before, nothing had ever been done with it  
7 before.

8 MR. MILLAN: The State objected to hearsay  
9 on the statement.

10 MS. DOYER: But we still talked about it.  
11 I'm just not seeing the connection or the -- or the  
12 motive for her to curry favor with Comal County  
13 authorities when she's being charged in another  
14 jurisdiction and it's something that happened two weeks  
15 ago.

16 THE COURT: Well, it's not really a  
17 different jurisdiction. It's a different venue.

18 MS. DOYER: I have no authority over Hays  
19 County. I have no ability to make any deals with her in  
20 Hays County. I'm not Hays County. For her to testify  
21 thinking that I'm going to get her a better deal in Hays  
22 County, that's not --

23 MR. MILLAN: The State's subjective belief  
24 in this regard has no bearing.

25 MS. DOYER: It's not a subjective belief.

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1 We're in different jurisdictions.

2 MR. MILLAN: And your objective belief has  
3 no bearing.

4 MS. DOYER: The fact that I prosecute in  
5 Comal County and she faces charges, which have not even  
6 been filed in Hays County, has nothing to do with her  
7 testimony yesterday.

8 MR. MILLAN: And Georganne Shirley has her  
9 own mind.

10 MS. DOYER: But her subjective belief is  
11 irrelevant as well. You can't --

12 MR. MILLAN: Exactly. Whatever she says  
13 is actually irrelevant. I agree with you. What's  
14 important is that the jury hear this and they can make  
15 their own determination and you can argue one way or the  
16 other on it.

17 MS. DOYER: What's important is that we  
18 follow the law. And the law requires a plausible  
19 connection or nexus between her pending charges in  
20 another jurisdiction and how she testified yesterday.

21 MR. MILLAN: I believe it's plausible.

22 THE COURT: When she did, in fact, sign an  
23 affidavit of nonprosecution, that does potentially  
24 create a nexus. And I think there's some optional  
25 completeness issues probably in regard to that

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1 affidavit. And once you went into them --

2 MS. DOYER: Whether she had signed an  
3 affidavit or not, she would still be here testifying.  
4 She's under subpoena.

5 THE COURT: But yet we had to go to the  
6 extent to have her put in jail to ensure that she would  
7 be here.

8 MS. DOYER: I didn't go to the extent to  
9 put her in jail. I put bond on it to ensure that if she  
10 didn't show up, I had another set of authorities that  
11 could assist me in bringing her to court.

12 THE COURT: And she's apparently been  
13 unable to make that bond.

14 MS. DOYER: But she's no longer in custody  
15 for an aggravated assault charge or a drug case. So  
16 this premise of I should be able to ask her why she's in  
17 custody, that completely blows out of the water.

18 MR. MILLAN: No, it doesn't, because the  
19 reason that's she's taking -- the means by which you're  
20 able to get that bond placed on her was based on the  
21 fact that you were able to get her based on the fact  
22 that she got picked up on these new charges.

23 MS. DOYER: Which has nothing to do with --

24 MR. MILLAN: You were unable to get her  
25 served with a subpoena until she got picked up on these

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1 new charges.

2 MS. DOYER: Which has nothing do with the  
3 Davis v. Alaska analysis. We're arguing about things  
4 that have nothing to do with the law.

5 THE COURT: Well, I don't think you can go  
6 into the details. I think you can obviously ask her  
7 where she's residing and -- and whatever, but -- or that  
8 she has recently been arrested just for whatever charges  
9 and that's it in Hays County so that it's clear. That  
10 it's a different venue.

11 MS. DOYER: I have a case directly on  
12 point that you're not allowed to ask what the charges  
13 are for. You can simply ask what the range of  
14 punishment is. It's Johnson v. State --

15 THE COURT: Very good.

16 MS. DOYER: -- court of criminal appeals.  
17 So he can't even ask her about the fact that it's an  
18 aggravated assault.

19 MR. MILLAN: That's fine. But I can say  
20 you're in custody on a first-degree and a second-degree  
21 felony.

22 MS. DOYER: You can't, because she's not  
23 on --

24 MR. MILLAN: It's the range of punishment.

25 MS. DOYER: She's not in custody on a

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1 first- or second-degree felony. Show me something. You  
2 can't ask someone something if you don't have a  
3 good-faith basis to believe it.

4 THE COURT: She has been charged --

5 MR. MILLAN: She's been charged with  
6 offenses that have a range of punishment of two to 20  
7 and five to 99.

8 MS. DOYER: I'm still objecting under 403,  
9 401 and that this is completely abreast of the Davis v.  
10 Alaska and subsequent case law.

11 THE COURT: Overruled.

12 MR. MILLAN: And, Judge, as to Mr. Nance,  
13 he has a pending case from December 20th of 2015,  
14 assault family violence, and guess who the complainant  
15 is: Georganne Shirley. That case has been pending  
16 since December of 2015, hasn't been filed by the State,  
17 hasn't been rejected by the State.

18 MS. DOYER: It was filed.

19 MR. MILLAN: It was filed. So it's  
20 pending?

21 MS. DOYER: Yeah. Yeah.

22 MR. MILLAN: Okay. So it's still pending.  
23 I believe under 613(b) that that's absolutely  
24 admissible, that -- if he's up here testifying as to  
25 that -- as to the facts of this case, whatever the --

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1 that pending charge and the fact that it involves  
2 Georganne Shirley, I think that Shirley creates a  
3 potential motive one way or the other.

4 MS. DOYER: Okay. So why are we -- so the  
5 defense is calling witnesses to the stand -- to the  
6 stand for the defense to impeach them with a motive or  
7 bias on their behalf?

8 MR. MILLAN: You subpoenaed him and you  
9 were going to call him as a witness.

10 MS. DOYER: No, I wasn't going to call him  
11 as a witness. I subpoena people all the time.

12 THE COURT: Fine. That's good.

13 MR. MILLAN: You said yesterday you were  
14 going to call him.

15 MS. DOYER: I never said that.

16 MR. MILLAN: You told me yesterday you  
17 were going to call him.

18 MS. DOYER: I did not. I don't have to  
19 tell you my trial strategy.

20 THE COURT: He was supposedly an  
21 eyewitness to this event, right, so he can --

22 MS. DOYER: He can call him, but not for  
23 the purposes of impeachment. That's not allowed under  
24 the law.

25 THE COURT: Very good.

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1 MR. MILLAN: I'm calling him as a fact  
2 witness. But I also think that the motive of bias is  
3 probably going to come up. I'm letting the Court know  
4 and --

5 MS. DOYER: Okay. Motive or bias -- okay.  
6 So when we're looking at Davis v. Alaska, it's does the  
7 witness have a motive or bias to testify favorably for  
8 the State.

9 So what he's going to do is call the  
10 defense -- the defense witness, Gerry Nance, and then  
11 ask him, hey, are you testifying for me because you have  
12 a bias in favor of the State? That doesn't make any  
13 sense.

14 MR. MILLAN: Judge, I will simply ask you  
15 to look at Carmona v. State of Texas, 698 S.W.2d 100.

16 MS. DOYER: In that case the defense  
17 called a defense witness and then cross-examined them  
18 about motive or bias testifying in favor of the State  
19 when the defense called them?

20 MR. MILLAN: No, because you -- you didn't  
21 anticipate --

22 MS. DOYER: If it didn't, then it's not on  
23 point.

24 MR. MILLAN: You anticipated what was --

25 THE REPORTER: One at a time, please, and



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1 everyone slow down.

2 THE COURT: While we're waiting on  
3 somebody to show up, why don't you hand me whatever  
4 cases y'all think are most relevant or most on point.  
5 Thank you.

6 MS. DOYER: Your Honor, I found a court of  
7 criminal appeals case -- let's put this on the record --  
8 Murphy v. State, 587 S.W.2d 718.

9 THE COURT: In regard to what issue?

10 MS. DOYER: Defense witness being called  
11 and then examine about his -- by his bias and --

12 THE COURT: Okay. Let me just deal with  
13 the writ of attachment first.

14 MS. DOYER: Okay.

15 THE COURT: You probably need to get this  
16 down to the clerk's office -- or we have them come down  
17 here.

18 THE BAILIFF: I'll call.

19 THE COURT: I'm presuming that this "found  
20 at" is just to assist law enforcement. Somebody is  
21 going to have to assist them --

22 MR. MILLAN: Yeah.

23 THE COURT: -- to give them some idea  
24 where to look.

25 MR. MILLAN: My understanding was that he

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1 may have been on-the-job in Corpus, but he was going to  
2 be back here at 2:00.

3 THE COURT: I mean, my point is I -- I've  
4 signed -- we'll get the clerk to issue it.

5 MR. MILLAN: Do you want me to take it  
6 over to the clerk's office?

7 THE COURT: I think they're going to bring  
8 somebody.

9 As to Mr. Nance, he's a fact witness?

10 MR. MILLAN: Yes, Your Honor.

11 THE COURT: He's present. He was  
12 subpoenaed by the State. You indicated that you thought  
13 they were calling him; correct?

14 MR. MILLAN: Yes, Your Honor.

15 THE COURT: Okay. I think we'll probably  
16 just have to see where his testimony goes. I don't know  
17 if he's going to contradict somebody else or --

18 MR. MILLAN: I'm just anticipating how  
19 things go. I mean, I wanted to bring it up so that the  
20 issue was, you know, in the Court's mind beforehand and  
21 we weren't doing this yo-yo thing back and forth.

22 THE COURT: If his testimony per chance  
23 ends up lockstep with what we've heard, then I don't  
24 know if his pending charge is going to ultimately be  
25 potentially relevant.

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1                   Now, I mean, if there's some -- I don't  
2 know. I mean, it may depend. That might make it more  
3 relevant. I don't know. I don't know what he's going  
4 to testify to.

5                   MR. MILLAN: I don't either, Judge.

6                   MS. DOYER: I just want -- if we get him  
7 today, then I want to do a hearing outside the presence  
8 of the jury.

9                   THE COURT: Okay. And if we get him  
10 tomorrow?

11                  MS. DOYER: Same.

12                  THE COURT: The same, okay.

13                  And did I understand that Ms. Shirley,  
14 that -- that she was also arrested that day?

15                  MR. MILLAN: No.

16                  MS. DOYER: No.

17                  THE COURT: No. Was there --

18                  MS. DOYER: No.

19                  THE COURT: Okay. Well, if you've got all  
20 13.

21                  THE BAILIFF: Yes, sir, Your Honor.

22                  (Jury enters courtroom)

23                  THE COURT: You may proceed.

24                  MR. MILLAN: Your Honor, may -- the  
25 defense calls Gregory McClure.

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1 THE COURT: Officer McClure? Deputy  
2 McClure?

3 MR. MILLAN: Deputy, sorry.

4 THE COURT: Let me get you to raise your  
5 right hand.

6 (Witness sworn)

7 THE COURT: Thank you. Have a seat. And  
8 you can tell if you get really close to that microphone,  
9 it does a lot better job.

10 THE WITNESS: Yes, sir.

11 GREGORY MCCLURE,  
12 having been first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MILLAN:

15 Q. Morning, Deputy McClure.

16 A. Morning.

17 Q. Could you please state your name for the  
18 record.

19 A. Gregory McClure.

20 Q. And I want to take you back to November 30th of  
21 2015. Do you remember making a call to the 150 Eagles  
22 Peak that day?

23 A. Yes, sir.

24 Q. Now, do you remember -- do you remember that  
25 day?

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1 A. Yes, sir.

2 Q. Can you tell me what happened when you first  
3 arrived at the scene?

4 A. I made contact with the caller, advised there  
5 had been a disturbance in the residence.

6 Q. Okay. And did you approach the -- the  
7 residence?

8 A. Yes. He gave us permission to go inside.

9 Q. Okay. And who -- who else was with you?

10 A. Deputy Sepeda.

11 Q. And did you all -- but did you all knock on the  
12 door?

13 A. There was no door.

14 Q. Okay. It was a -- it was like a French door,  
15 wasn't it?

16 A. No. There was sheet.

17 Q. Do you remember knocking at all before you went  
18 in?

19 A. Into -- their bedroom was separate from the  
20 kitchen area. We went into the home, which the  
21 homeowner gave us permission to go into his home.

22 Q. Okay.

23 A. There was no knocking. There was loud music  
24 playing. We announced ourselves as deputies.

25 Q. Okay. And -- and can you describe as you were

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1 entering into the residence going back towards the  
2 bedroom what did you see?

3 A. Furniture everywhere, pretty messy.

4 Q. Did anybody else -- did you see anybody else in  
5 the house?

6 A. Until we made the bedroom, no.

7 Q. Okay. What did you see when you -- when you  
8 got to the bedroom?

9 A. Deputy Sepeda was in front of me. He was  
10 saying hello, sheriff's office. A female came out, like  
11 opened the curtain. I had just partial visual of the  
12 bed -- or the room. She came out and was like, thank  
13 you, and --

14 Q. Without getting into anything she said --

15 A. Okay.

16 Q. -- just what you saw.

17 A. Just a female and then a gentleman here laying  
18 down on the bed.

19 Q. Okay. At some point did the -- did the  
20 gentleman laying down on the bed, did he get up or did  
21 he stay in the bed or what did he do?

22 A. The female came out first. And then Deputy  
23 Sepeda was like, hey, wake up. Wake up. He got up out  
24 of bed. He was fully clothed and he bent down and  
25 started tying his shoes immediately.

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1 Q. Okay. And at that -- did he make any  
2 movements?

3 A. He started -- we asked him to step outside the  
4 bedroom into the kitchen area. He walked in front of  
5 Deputy Sepeda and behind me.

6 Q. Okay. And -- and did you -- did you talk to  
7 him?

8 A. I just asked him to remove his hands from his  
9 pockets. He had his hands in his pockets. And then we  
10 entered the kitchen area where he started walking  
11 towards me and I kind of bladed off of him.

12 Q. And after that point, what happened?

13 A. I was kind of looking around. There were a  
14 couple of knives in the kitchen. I didn't know who we  
15 were dealing with or what the situation of the call was.

16 At that time he -- he kind of started  
17 walking towards me. So I kind of side-stepped to move  
18 away from him. He started getting close to me. And at  
19 that time, Deputy Sepeda realized he's going to run. He  
20 said he's going to run and he took off immediately as he  
21 was saying it.

22 Q. Okay. And did you chase after him?

23 A. Yes, sir.

24 Q. How far did you chase after him?

25 A. I stopped at the doorway, hit something, a

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1 Foosball table or something and then he tripped at the  
2 doorway. I chased him down the street to the first stop  
3 sign and he made a left on -- I can't remember -- sunny  
4 something street name. And then an off-duty police  
5 officer chased him down. He had maybe ten yards in  
6 front of me and was able to stop him.

7 Q. Okay. And -- and at the -- at the point  
8 that -- that you-all took him into custody, he was -- he  
9 was -- would you say that he was in an excited --

10 MS. DOYER: Objection, leading.

11 THE COURT: Overruled.

12 Q. (BY MR. MILLAN) Would you say that he was in an  
13 excited state of mind?

14 A. I mean, he seemed exhausted. He was running.  
15 He ran about a good 200 yards, as much as I was.

16 Q. After you took him into custody, did he seem  
17 angry?

18 A. At the beginning, yes.

19 Q. Was he agitated?

20 A. Yes. He started banging his head against my  
21 Tahoe.

22 Q. Okay. And so he -- he was in an excited state;  
23 right?

24 MS. DOYER: Objection, leading.

25 THE COURT: I mean, I think it's already



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1 pretty well-established, but overruled.

2 Q. (BY MR. MILLAN) Okay. And so while he was in  
3 his state, did he -- did he tell you why he ran?

4 MS. DOYER: Objection, hearsay.

5 THE COURT: Overruled.

6 Q. (BY MR. MILLAN) Did he tell you why he ran?

7 A. He said he thought he had a warrant.

8 Q. Okay. Now, at some point did he calm down?

9 A. Yeah. After we picked him back up off the  
10 ground, called EMS, he started to calm down. We gave  
11 him some water.

12 Q. Why did you call EMS?

13 A. It's protocol. He ran. He was tackled by  
14 another officer. He hit the ground. We have to check  
15 him out, make sure he's okay.

16 Q. Did you witness any injuries on him?

17 A. Yeah. He had a laceration to his forearm --  
18 and he refused medical attention at the time when they  
19 got there -- and then whatever scrapes he might have got  
20 from his knees when he hit the ground.

21 Q. What if -- did you notice any bite marks on  
22 him?

23 A. No. He mentioned it. But at that time, from  
24 him evading, I wasn't going to take off his handcuffs  
25 and check for any other injuries. All I could see is

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1 what EMS pulled up from his long-sleeved shirt.

2 Q. Did you do anything to memorialize the injuries  
3 that he had, took photos, anything?

4 A. We -- we document photos. But due to his  
5 behavior from running from us, I'm not going to take  
6 that chance and take him out of handcuffs to document  
7 anything like.

8 He was treated by EMS and he refused.  
9 Then once they make down to the jail, they see medical.  
10 They take over from there and they're supposed to  
11 document any pre-existing injuries before they enter the  
12 jail.

13 Q. Did you ask any questions of -- without getting  
14 into anything that was said, did you ask Ms. Shirley  
15 about the incident?

16 A. That's the victim? Is she the victim?

17 Q. The complainant, yes.

18 A. I didn't speak to her. I watched him the whole  
19 time at my vehicle.

20 Q. Okay. So your job was to be watching Derek  
21 Porter; is that right?

22 A. I took over that -- or I assumed that position.  
23 I placed him in custody for evading and held him in my  
24 vehicle until he interviewed her.

25 Q. So in your role, I mean, are you supposed to --

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1 to -- to help gather evidence for -- for a case like  
2 this also in -- with the role that you were in as the  
3 officer at the scene?

4 A. As far as -- I don't understand the question.

5 Q. Is part of your role in being an officer at a  
6 scene like this to gather evidence?

7 A. Yeah, or -- what I was -- where I was at, yeah.  
8 I mean, I -- I did what I did and -- and stayed with him  
9 at the vehicle and detained him while the other deputy  
10 interviewed the victim.

11 Q. And you actually were in control of Derek  
12 Porter. You had him the entire time up until he -- you  
13 went to the station house; is that right?

14 A. Yeah. I mean a couple of times I might have  
15 walked from my vehicle.

16 Q. Now, EMS came to the scene at 150 Eagles Peak;  
17 is that right?

18 A. Yes, sir.

19 Q. And did you witness them treat -- any treatment  
20 of Derek Porter by EMS?

21 A. I stood by while they treated him for whatever  
22 injuries he had. I know that he was bleeding from some  
23 pre-existing injury. And he said he didn't want any  
24 treatment. I asked if they wanted to put gauze on it or  
25 pack it because it was bleeding. He was wearing a white

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1 sweater and it was bleeding.

2 Q. You said he didn't want treatment; right?

3 A. Yeah, he refused treatment.

4 MR. MILLAN: May I approach the witness,  
5 Your Honor?

6 THE COURT: Yes, sir.

7 Q. (BY MR. MILLAN) I want you to look at number 11  
8 and read number 11 to yourself, the whole paragraph.

9 A. Yes, sir.

10 Q. Okay. May I have that page back, please?

11 A. Okay.

12 Q. According to your report, EMS felt that the  
13 wound was too deep to treat; is that right?

14 A. Yes.

15 Q. So it wasn't just necessarily that he didn't  
16 want to be treated. It's that they -- EMS didn't feel  
17 that they could treatment him; right?

18 MS. DOYER: Objection, leading.

19 THE COURT: Overruled.

20 A. I can't answer that. I'm not medical  
21 personnel.

22 Q. (BY MR. MILLAN) You put it in your report,  
23 didn't you?

24 A. That he was -- had a laceration, yes.

25 Q. And that EMS said it was too deep to treat;

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1 right?

2 A. Yes.

3 Q. So after that you -- you took Derek Porter to  
4 the -- to the jail; is that right?

5 A. Yes.

6 Q. Without getting into anything that Derek Porter  
7 said, did you ask him about the incident and what  
8 happened?

9 A. As far -- I didn't know what had happened.

10 Q. Okay.

11 A. My whole job was to watch him.

12 Q. So you didn't do any investigation to determine  
13 whether -- based on those injuries, how they got there  
14 and whether somebody was at fault for them?

15 A. That was the other deputy's job that was  
16 interviewing her. And they came to the conclusion that  
17 there was assault involved and those charges were added  
18 on. I'm not the reporting office who took all of them.

19 Q. And that was Sepeda; correct?

20 A. And Deputy Bailee, I believe.

21 Q. And did you ever Sepeda talking to Derek  
22 Porter?

23 A. Yes.

24 Q. Okay. You're saying he took Derek Porter's  
25 statement?

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1           A.    No.  He came and talked to him after that -- at  
2   the vehicle where I was at.

3           Q.    And then after that, did you -- what did you do  
4   with Mr. Porter after EMS left?

5           A.    I -- we waited while they interviewed the  
6   victim.  I gave him water a couple of times.  He was out  
7   of breath, so I kept giving him water.  And I took  
8   him -- transported him to the jail.

9           Q.    Okay.  Would the jail accept him?

10          A.    No.  I told them he had a laceration that he  
11   had on his forearm.  They said it was too deep -- or  
12   they told me they couldn't treat it.  So I took him to  
13   the -- I think it was Resolute and they treated him as  
14   Resolute.

15          Q.    And this whole time -- so you're going back to  
16   the jail.  They're telling you that the cut is too deep.  
17   You never thought, maybe I should take a picture of this  
18   cut?

19          A.    Not -- like I said before, he evaded from me  
20   from the beginning.  He was irate, banging his head on  
21   my Tahoe.  I'm not going to take the chance of taking  
22   him out of handcuffs.

23          Q.    Was he in handcuffs when he was at Resolute?

24          A.    If they did, we put them in the front.

25          Q.    If they did, but you don't remember whether he

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1 was in handcuffs or not?

2 A. Sir, that's two years ago. I can't tell you if  
3 I put them towards the front or not. Depending on his  
4 behavior if I let them -- if I took them off to treat  
5 him, I don't know. It might have just been one handcuff  
6 while they X-rayed it. I think they took an X-ray.

7 Q. And do you remember what the X-ray showed?

8 A. I didn't look at the X-rays. I just know that  
9 they told me there was something wrong with his elbow.

10 Q. Okay. And he actually had to -- did you notice  
11 how they treated his injury?

12 A. No. I just stand by and make sure nothing  
13 happens.

14 Q. Did you see anything on his arm after they got  
15 through with it?

16 A. Just the cut that I saw before.

17 Q. Did you -- you didn't see the treatment put on  
18 the cut?

19 A. No. I just know that they treated his  
20 injuries. I don't know what they did to it.

21 MR. MILLAN: May I approach the witness,  
22 Your Honor?

23 THE COURT: Yes, sir.

24 Q. (BY MR. MILLAN) I'd like you to read number 14  
25 to yourself.

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1           A.     Okay. Like I said, I haven't seen this in  
2 almost two years.

3           Q.     I understand. Based -- I mean, do you  
4 recollect now what was on his arm?

5           A.     Yeah, they put a splint. I mean, I wrote that  
6 in my report --

7           Q.     Okay.

8           A.     -- and bandaged it.

9                     MR. MILLAN: Pass the witness.

10                    CROSS-EXAMINATION

11 BY MS. DOYER:

12           Q.     Deputy McClure, what led you to believe it was  
13 a pre-existing injury as far as what you observed?

14           A.     It was -- it wasn't bleeding. You know, it  
15 looked like it was dried-up blood on it. It looked like  
16 it had been trying to heal but reopened. It was in a  
17 bad spot where it bends a lot.

18                     MS. DOYER: Pass the witness.

19                    REDIRECT EXAMINATION

20 BY MR. MILLAN:

21           Q.     Without getting into what was said, what -- do  
22 you remember whether Mr. Porter said what the source of  
23 the injury was?

24                     MS. DOYER: Objection. That calls for  
25 hearsay.



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1 MR. MILLAN: No.

2 THE COURT: Overruled.

3 MS. DOYER: It's back-door hearsay.

4 Q. (BY MR. MILLAN) Without getting -- do you  
5 remember what he said what the source of the injury was?

6 A. That she cut him.

7 MR. MILLAN: Pass the witness.

8 MS. DOYER: No further questions.

9 THE COURT: Thank you. You can step down.

10 THE WITNESS: Thank you.

11 THE COURT: Next witness?

12 MR. MILLAN: Georganne Shirley,

13 Your Honor.

14 THE COURT: Where is she?

15 THE BAILIFF: She is in the hallway.

16 THE COURT: If you'll just return to the  
17 stand, please, ma'am. And do get closely to the mike,  
18 if you would. Recall that you are under oath.

19 Mr. Millan?

20 You remain under oath. Thank you.

21 THE WITNESS: Okay.

22

23

24

25

GEORGANNE SHIRLEY - JUNE 6, 2017  
Direct Examination by Mr. Millan

1                   GEORGANNE SHIRLEY,  
2   having been previously duly sworn, testified as follows.

3                   DIRECT EXAMINATION

4   BY MR. MILLAN:

5       Q.    Good morning, Ms. Shirley.

6       A.    Good morning.

7       Q.    Where are you residing right now?

8       A.    Excuse me?

9       Q.    Where are you residing right now?

10      A.    987 -- 975 Palomino Drive in Kyle, Texas.

11      Q.    Where did you sleep last night?

12      A.    I slept at the Hays -- at the Comal County as  
13   a -- on a bench warrant.

14      Q.    Okay. And -- and you're bench warranted for  
15   this case; is that right?

16      A.    Yes.

17      Q.    And as of now, you have pending charges in Hays  
18   County for a charge that has a range of punishment of  
19   five to 99 years and a charge -- a case that has range  
20   of punishment of two to 20 years; is that correct?

21      A.    I'm not really sure.

22      Q.    Okay. But if I told you that, would you -- do  
23   you have any reason to deny that?

24      A.    No.

25                   MR. MILLAN: Pass the witness.

GEORGANNE SHIRLEY - JUNE 6, 2017  
Cross-Examination by Ms. Doyer

1 CROSS-EXAMINATION

2 BY MS. SHIRLEY:

3 Q. Ms. Shirley, those charges that are pending in  
4 Hays County, you and I have discussed those charges;  
5 right?

6 A. Yes.

7 Q. And you understand I don't have jurisdiction in  
8 Hays County?

9 A. Yes.

10 Q. You understand that nothing has been promised  
11 here to you in exchange for your testimony against the  
12 defendant?

13 A. Yes.

14 Q. Those charges, did they arise after the  
15 incident with Mr. Porter you testified about yesterday?

16 A. Yes.

17 Q. Is everything that you told this jury yesterday  
18 about what happened to you the truth?

19 A. Yes?

20 MS. DOYER: Pass the witness.

21 MR. MILLAN: No further questions.

22 THE COURT: Okay. You can step down.

23 MS. DOYER: Can this witness be excused at  
24 this time?

25 MR. MILLAN: I'm going to say subject to

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1 re-call because I have no idea where this thing is  
2 going, Your Honor.

3 THE COURT: Okay. Very good.

4 You may step down.

5 MR. MILLAN: Your Honor, at this time we'd  
6 call Gerard Nance.

7 May we approach, Your Honor?

8 THE COURT: You may.

9 (At the bench, on the record)

10 MR. MILLAN: He may be my last witness,  
11 so --

12 THE COURT: Who -- who informed him he  
13 could go to Corpus Christi?

14 MS. DOYER: No one.

15 THE COURT: Well, he's been subpoenaed to  
16 be here this week --

17 MS. DOYER: Yes.

18 THE COURT: -- by the State; right?

19 MS. DOYER: He was subpoenaed, yes.

20 THE COURT: Has anybody been able to make  
21 any contact with him by phone --

22 MS. DOYER: Not that I'm aware of.

23 THE COURT: -- text or anything?

24 I mean, do you have reason to believe -- I  
25 don't know, did he make a statement, give a written

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1 statement?

2 MS. DOYER: He did.

3 THE COURT: Is there some indication about  
4 this fight, this cut or whatever --

5 MS. DOYER: No.

6 THE COURT: -- that he may or may not -- I  
7 don't know. What's in the statement?

8 MR. MILLAN: Judge, the fact that he was  
9 in the house, he was right -- real close to where  
10 supposedly the incident took place and did not see any  
11 physical altercation whatsoever.

12 THE COURT: Where did this alleged cut  
13 come from?

14 MS. DOYER: Two weeks prior.

15 MR. MILLAN: Well, there was a bite mark  
16 on the arm from the same day.

17 THE COURT: Okay. But I'm talking about  
18 the cut.

19 MS. DOYER: It is not from this incident.

20 MR. MILLAN: He told me -- he told the  
21 police that she cut him from a previous incident.

22 THE COURT: Okay. On a previous incident.

23 MR. MILLAN: Yeah, but she could have been  
24 charged.

25 THE COURT: But we don't know where it

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1 was?

2 MR. MILLAN: I'm sorry?

3 THE COURT: We don't know when or where  
4 that happened.

5 MR. MILLAN: Same house.

6 THE COURT: Okay. I thought she testified  
7 yesterday that was the first time he had been there, or  
8 he just showed up unannounced or something.

9 MR. MILLAN: I'll double-check on that,  
10 Judge, but I thought it was at 150 Eagles Peak. It  
11 might have been a different address.

12 THE COURT: I thought they had broken up  
13 two weeks prior.

14 MS. DOYER: There are some serious issues  
15 with his version of events as far as the timeline is  
16 concerned.

17 THE COURT: And so this guy is only going  
18 to be able to testify about what's in his statement. It  
19 has nothing to do with the potential cut or anything?

20 MR. MILLAN: I mean, Judge, he heard the  
21 sounds. He called 911.

22 MS. DOYER: But not from this -- this  
23 alleged cut that --

24 MR. MILLAN: We don't know. We don't  
25 know. I mean, I haven't gotten into detail on this --

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1 on crossing this guy. The only thing I've heard is what  
2 he testified to at the examining trial and that wasn't  
3 much.

4 MS. DOYER: Because he has an observation,  
5 his estimate --

6 MR. MILLAN: Well, Esman could have gone  
7 into more detail, but whatever.

8 THE COURT: So Mr. Esman, I take it,  
9 represented your client previously?

10 MR. MILLAN: He got off the case and then  
11 I got the case.

12 THE COURT: I'm just trying to ascertain  
13 exactly what is this guy potentially going to testify  
14 about.

15 MS. DOYER: That's why I didn't call him.

16 THE COURT: Yeah, but -- I mean, he needs  
17 to know from the State's behalf that -- I mean, if he's  
18 been subpoenaed by the State, he needs to be readily  
19 available and not --

20 MS. DOYER: I'm sure that was  
21 communicated --

22 THE COURT: -- away.

23 MS. DOYER: -- to him.

24 THE COURT: I mean, even if you decide not  
25 to call some witness, they need to be within -- they

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1 need to know ahead of time. If they've been subpoenaed,  
2 they need to be within 30 minutes or so of the  
3 courthouse.

4 MS. DOYER: We tell all of our witnesses  
5 that.

6 THE COURT: I mean, I think the best thing  
7 to do is send the jury home for the day and let them go  
8 on about their business.

9 MR. MILLAN: That's fine, Judge.

10 THE COURT: I mean, the only other  
11 alternative is just for us maybe to call them between  
12 2:00 and 3:00 and let them know if we can finish today,  
13 but -- well, do you want me just to send them back and  
14 let Adam ask them if they would rather be back at 9:00  
15 or kind of be on hold until 2:00 or 3:00 --

16 MR. MILLAN: Up to you, Judge.

17 THE COURT: -- to see if there is a  
18 consensus. Do you refer that I do it from the bench or  
19 just let Adam do it?

20 MR. MILLAN: My concern is if we tell them  
21 to come back at 2:00 or 3:00, they might not be able to  
22 get him here.

23 THE COURT: I'm going to say that we can  
24 call them between 2:00 and 3:00 --

25 MR. MILLAN: To let them know to come back



1 if --

2 THE COURT: -- or just stand down until in  
3 the morning. Would you rather me just have them stand  
4 down until in the morning?

5 MR. MILLAN: We have 13 people. Having  
6 them on call, I would rather have them stand down until  
7 morning because of the uncertainty.

8 THE COURT: Any objection?

9 MS. DOYER: I'm going to check with Amber  
10 really quick before you do that.

11 THE COURT: Okay.

12 (At the bench, concluded)

13 THE COURT: Ladies and gentlemen, rather  
14 than keep you back here cooling your heels or anything  
15 of that nature, there is a witness that has been  
16 subpoenaed that -- that we are doing our best, including  
17 assistance through law enforcement, to get him here,  
18 and -- but I'm not going to keep you just sitting here  
19 on pins and needles so to speak.

20 So what I'm going to do is just recess  
21 this matter. I had one option that I was thinking maybe  
22 we'd call y'all between 2:00 and 3:00. But rather than  
23 just kind of keeping y'all on hold this way, if you want  
24 to go about your business this afternoon, you may and  
25 we'll just come back at 9:00 in the morning.

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1                   I need you just to be mindful of your  
2 admonitions not to do any drive-bys, not to do any  
3 independent investigation and not to talk with anybody  
4 about anything to do with this offense. Stay off the  
5 Internet, et cetera, regarding this case at least.

6                   I trust everybody will be mindful of those  
7 admonitions and we'll just see y'all in the morning at  
8 9:00. Thank you.

9                   (Proceedings adjourned)

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1 STATE OF TEXAS  
2 COUNTY OF COMAL  
3

4 I, Cindy Cummings, Official Court Reporter in and  
5 for the 433rd District Court of Comal, State of Texas,  
6 do hereby certify that the above and foregoing contains  
7 a true and correct transcription of all portions of  
8 evidence and other proceedings requested in writing by  
9 counsel for the parties to be included in this volume of  
10 the Reporter's Record in the above-styled and numbered  
11 cause, all of which occurred in open court or in  
12 chambers and were reported by me.

13 GIVEN UNDER MY HAND, this the 9th day of August,  
14 2017.

15 /s/ Cindy Cummings

16 Cindy Cummings, Texas CSR 3210  
17 Official Court Reporter  
18 433 Judicial District Court  
19 150 N. Seguin Street  
20 Suite 317  
21 New Braunfels, Texas 78130  
22 Tel 830-221-1279  
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